

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

API ENTERPRISES, INC.,

Plaintiff,

v.

CATERPILLAR INC.,

Defendant.

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CASE NO.

NOTICE OF REMOVAL

Defendant Caterpillar Inc. (“Caterpillar”) hereby gives notice of removal of this action to the United States District Court for the Southern District of Texas. *See* 28 U.S.C. §§ 1441 and 1446. In support thereof, Caterpillar states as follows:

1. On June 29, 2018, API Enterprises, Inc. (“API”) commenced a civil action in the in the 458th Judicial District Court of Fort Bend County, Texas, styled *API Enterprises, Inc. v. Caterpillar, Inc.*, Cause No. 18-DCV-252670 (referred to herein as the “State Action”). Pursuant to 28 U.S.C. § 1446(a), copies of all process and pleadings served in the State Action are attached to this Notice as Exhibits A-E.

2. In the State Action, API seeks damages for Caterpillar’s alleged breach of warranty and breach of contract. Specifically, API alleges to have purchased two pieces of Caterpillar equipment and related extended warranties. API alleges that the subject equipment “failed” and the warranties obligated Caterpillar to repair the equipment, which Caterpillar has failed and refused to do. As the result of Caterpillar’s failure and refusal, API alleges to have sustained damages and is “seeking the recovery of monetary relief in excess of \$200,000, but not more than \$1,000,000.”

3. Caterpillar received service of API's State Action on or about July 9, 2018. Caterpillar filed its answer to the State Action on July 30, 2018. This notice is thus timely under 28 U.S.C. § 1446(b), having been filed with this Court within thirty days after receipt by Caterpillar of a copy of an "initial pleading setting forth the claim for relief upon which such action or proceeding is based..." 28 U.S.C. §1446 (b).

4. This Court has original subject matter jurisdiction over this case pursuant to 28 U.S.C. §1332 (Diversity Jurisdiction) because it is a civil action between citizens of different states where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. Consequently, removal of the State Action to this Court is appropriate pursuant to 28 U.S.C. §§ 1441(a) and 1446.

5. Caterpillar is a Delaware corporation with its principal place of business in Deerfield, Illinois.

6. API is a Texas corporation.

7. Complete diversity of citizenship thus exists between the relevant parties. *See* 28 U.S.C. § 1332(a).

8. In its State Action, API seeks recovery of monetary relief in excess of \$200,000.00, but not more than \$1,000,000.00. Although Caterpillar denies API's claims, Caterpillar believes in good faith that more than \$75,000.00 is in controversy, exclusive of interest and costs as per 28 U.S.C. §1332(a).

9. The State Action is thus a civil action over which the district courts of the United States have original jurisdiction in that the action involves an amount in controversy which exceeds the sum of \$200,000.00, but not more than \$1,000,000.00, exclusive of interest and

costs, and it is between citizens of different states within the meaning of 28 U.S.C. §§ 1332 and 1441(a).

10. A true and correct copy of this Notice has been sent to the Clerk of the 458th Judicial District Court for Fort Bend County, for filing as provided by law, and is concurrently being served on API in accordance with 28 U.S.C. § 1446(d).

11. Caterpillar Inc. expressly reserves all rights to assert all defenses to this action.

WHEREFORE, Caterpillar respectfully gives notice that the action formerly pending in the 458th Judicial District Court of Fort Bend County, Texas, has been removed to this Court.

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /s/ Gregory C. Ulmer

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

In accordance with the Federal Rules of Civil Procedure, I hereby certify that on the 1st day of August, 2018, I electronically filed the foregoing with the Clerk using the CM/ECF system, and that a true and correct copy of the foregoing document was forwarded to the following counsel of record by electronic service and/or by certified mail return receipt requested:

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